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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,) No. CR 05 0324 MMC
Plaintiff,)
v.) **UNITED STATES' SENTENCING
MEMORANDUM**
DENNIS CYRUS, JR.,)
Defendant.)
Hearing: November 19, 2010
Time: 1:30PM
Court: Hon. Maxine M. Chesney

I. INTRODUCTION

On May 11, 2009, after trial by jury, the defendant was convicted of all sixteen counts of the captioned redacted indictment: one violation of 21 U.S.C. § 846, conspiracy to distribute narcotics; one violation of 18 U.S.C. § 1962(d), conspiracy to commit a RICO crime; one violation of § 1959(a)(5), attempted VICAR murder; one violation of § 1959(a)(3), VICAR assault with a dangerous weapon; three violations of § 1959(a)(1), VICAR murder; one violation of § 1959(a)(1), VICAR kidnaping; one violation of § 1512(a)(1)(A) and (C), witness murder; one violation of § 1513(a)(1)(A) and (B), witness retaliation; one violation of 21 U.S.C. § 841, possession with intent to distribute crack cocaine; one violation of 21 U.S.C. § 860(a), possession with intent to distribute crack

cocaine near a playground or housing facility; and four violations of 18 U.S.C. § 924(c), discharging a firearm during a crime of violence. Sentencing has been set for November 19, 2010. On June 26, 2009, the jury determined that the defendant's sentence for each VICAR murder shall be life without the possibility of release.

The United States submits that the defendant's Offense Level is 43 and his Criminal History is IV, yielding an applicable Guidelines-advised sentence of life imprisonment plus consecutive sentences for each § 924(c) count. Taking into consideration that recommendation plus § 3553(a)'s sentencing factors as set forth more fully at trial and below, the United States respectfully requests that the Court sentence the defendant to three consecutive terms of life imprisonment without the possibility of release for each VICAR murder, to be followed by a consecutive term of 20 years for the VICAR assault with a dangerous weapon on Marcus Atkinson, to be followed by a consecutive term of a total of life for all remaining non-§ 924(c) counts, to run concurrently with each other, to be followed by four consecutive terms of life imprisonment for each § 924(c) count. This results in an overall sentence of eight consecutive life sentences, three of which are without possibility of release, followed by a consecutive 20 year sentence.

II. STATEMENT OF FACTS

The Court and the parties are well aware of the facts and circumstances of this case, so no lengthy statement of facts appears necessary. At trial, the United States proved that the defendant committed sixteen federal crimes centered around his membership in the Page Street Mob, a violent street gang operating in the Western Addition of San Francisco. As part of his activities with Page Street Mob, the defendant attempted to murder Marcus Atkinson by shooting him four times about the chest, tortured, kidnaped, and murdered Joseph Hearn, shot Randy Mitchell numerous times at point blank range, killing him, and executed Ray Jimmerson, Jr., because he was a cooperating federal witness. The United States also proved that Cyrus personally

1 possessed crack cocaine with the intent to distribute it near a playground and that he
 2 conspired with other Page Street Mob members to distribute crack cocaine. The jury
 3 convicted on all counts and delivered a sentence of life without the possibility of release
 4 for Counts Five, Seven, and Eight, each of which are VICAR counts related to Cyrus's
 5 three murders.

6

7 **III. OVERVIEW OF SENTENCING GUIDELINES CALCULATIONS**

8 The United States submits that the Offense Level applicable to Cyrus should be
 9 calculated as follows:

10

| | | | |
|----|---------------------|-----------------------|---|
| 11 | Base Offense Level: | 51 | U.S.S.G. § 2E1.1(a)(2) (more fully discussed 12 below) |
| 13 | Group Adjustment | +3 | U.S.S.G. § 3D1.4 |
| 14 | Total | 43¹ | |

15 **IV. DISCUSSION OF GUIDELINES CALCULATIONS**

16 The Guidelines calculation in a multi-count RICO case such as this one can be
 17 complicated. Perhaps as a result, the PSR has significantly miscalculated the guidelines
 18 in this case. While the United States agrees with Probation's ultimate calculation of
 19 Cyrus's offense level of 43, it is important that the guidelines be properly calculated so
 20 that the Court may take them into consideration. Accordingly, the full and proper
 21 calculation of the guidelines follows, organized by the proper grouping of offenses under
 22 § 3D1.4.

23

24 **Group One: Narcotics Conspiracy, Offenses, and Murder of Randy Mitchell
 25 in Furtherance Thereof (Counts 1, 7, 11, & 12):**

26 **Offense Level 45**

27

28 ¹ According to Application Note 2 to the Sentencing Table in Chapter 5, Part A, "An
 offense level of more than 43 is to be treated as an offense level of 43."

1 The United States agrees with U.S. Probation that all three of the defendant's drug
 2 related convictions are grouped along with the murder of Randy Mitchell, which was
 3 alleged as an overt act of the drug conspiracy, and that the resulting base offense level is
 4 43 due to § 2D1.1(d)(1)'s cross reference to the first-degree murder guidelines in §
 5 2A1.1(a). Additionally, the United States submits that the defendant should receive a 2-
 6 level upward adjustment for obstruction of justice because it was established at trial that
 7 Cyrus contacted witness Delwan Blazer and asked him to lie about his knowledge of the
 8 Randy Mitchell murder while both were in custody. Accordingly, we would submit the
 9 following Guidelines calculation for Group One:

| | | |
|----|--|-----------|
| 10 | Base offense level (as cross-referenced) (§ 2A1.1(a)): | 43 |
| 11 | Obstruction of Justice (§ 3C1.1): | <u>+2</u> |
| 12 | TOTAL: | 45 |

13

14 **Group Two: RICO Conspiracy (Count 2):**

15 **Offense Level 51**

16 Unfortunately, U.S. Probation has badly miscalculated the RICO conspiracy
 17 guidelines, splitting up Count Two into numerous different groups. This is plainly
 18 improper under § 3D1.1–1.4, which sets forth the procedure for determining the offense
 19 level for multiple counts of conviction. U.S. Probation's inclusion of Count Two, the
 20 RICO conspiracy count, in multiple different groups has no basis in precedent or the
 21 guidelines themselves, which clearly state that each count of conviction must be placed
 22 into a "distinct" group. § 3D1.1(a)(1). Count Two must be placed into a single, distinct
 23 group, and because it encompasses numerous instances of criminal activity no single one
 24 of which "involves substantially the same harm" as the overall RICO conspiracy, it must
 25 be a group unto itself. § 3D1.2.

26 The offense level for RICO conspiracy is determined under § 2E1.1(a)(2), and it
 27 requires a calculation of each of the offense levels for all the underlying racketeering act
 28 offenses. The offense levels for each underlying offense are then grouped together

1 according to the grouping rules in Chapter Three, Part D, which then yields the final
 2 offense level for the RICO conspiracy count. In other words, instead of the overt acts
 3 being part of the larger grouping to determine the overall offense level for the entire case,
 4 § 2E1.1(a)(2) requires a calculation of each overt act within the RICO guideline to
 5 determine its overall base offense level.

6 Confusingly, U.S. Probation claims that the grouping rules can only be applied
 7 once, and thus cannot be “internally” applied within the RICO count’s guidelines
 8 determination. This ignores the plain language of Application Note 1 to § 2E1.1.
 9 Application Note 1 states that “[w]here there is more than one underlying offense, treat
 10 each underlying offense as if contained in a separate count of conviction” and then “apply
 11 Chapter Three, Parts A, B, C, and D” to determine the overall offense level for the RICO
 12 count. Because Chapter Three, Part C contains the grouping rules, it is clear that an
 13 internal calculation of the RICO predicates, including grouping rules, must be utilized to
 14 determine the overall offense level for Count Two’s RICO conspiracy conviction.

15 It is appropriate to include all specifically alleged racketeering acts contained in
 16 Count Two of the indictment occurring since Cyrus joined Page Street Mob as an adult,
 17 including those he did not personally commit, because relevant conduct includes all acts
 18 by co-conspirators that are reasonably foreseeable to the defendant. § 1B1.3(a). The two
 19 post-arrest events for which Cyrus is criminally responsible are the attempted murders of
 20 Pedro Raigoza and Randy Minor and the conspiracy to murder Travis Trammell. Cyrus
 21 himself committed the most serious violent acts alleged against Page Street Mob and
 22 personally dealt drugs; accordingly, it was reasonably foreseeable that other members
 23 would commit violent acts and deal drugs as well, even after he was jailed.² The

24

25 ² U.S. Probation refused to include the two post-arrest acts because it did not believe there
 26 was any evidence Cyrus actually knew they would occur. Of course, that misunderstands the
 27 law, which *presumes* lack of knowledge in the vicarious liability context. *See, e.g., United States
 28 v. Hoskins*, 282 F.3d 772, 776 (9th Cir. 2002) (explaining that, to demonstrate vicarious liability,
 that the government “is not required to establish that [a defendant] had actual knowledge of the
 [crime]. The touchstone is foreseeability”).

1 defendant never withdrew from the conspiracy (he was still writing “PST” on his
 2 jailhouse wall well after arrest), and knew that his fellow Page Street Mob members were
 3 still on the street. Accordingly, the United States submits that the Guidelines calculation
 4 for Group Two, which consists solely of Count Two, are as follows:

5 *Rack Act 8: Attempted Murder of Marcus Atkinson*

| | | |
|---|--|-----------|
| 6 | Base offense level (§ 2A2.1(a)(1)): | 33 |
| 7 | Life threatening bodily injury (§ 2A2.1(b)(1)(A)): | +4 |
| 8 | Restraint of Victim (§ 3A1.3): | <u>+2</u> |
| 9 | TOTAL: | 39 |

10 *Rack Act 9: Murder of Joseph Hearns*

| | | |
|----|-----------------------------------|-----------|
| 12 | Base offense level (§ 2A1.1(a)): | 43 |
| 13 | Restraint of Victim (§ 3A1.3): | +2 |
| 14 | Obstruction of Justice (§ 3C1.1): | <u>+2</u> |
| 15 | TOTAL: | 47 |

16 GROUPED:

18 *Rack Act 10: Possession with Intent to Distribute 31.04g crack*

19 *Rack Act 11: Murder of Randy Mitchell*

20 *Rack Act 12: Possession with Intent to Distribute 5.88g crack*

| | | |
|----|-----------------------------------|-----------|
| 21 | Base offense level (§ 2A1.1(a)): | 43 |
| 22 | Obstruction of Justice (§ 3C1.1): | <u>+2</u> |
| 23 | TOTAL: | 45 |

25 *Rack Act 13: Murder of Ray Jimmerson*

| | | |
|----|-----------------------------------|-----------|
| 26 | Base offense level (§ 2A1.1(a)): | 43 |
| 27 | Obstruction of Justice (§ 3C1.1): | <u>+2</u> |
| 28 | TOTAL: | 45 |

Rack Act 14: Attempted Murders of Randy Minor and Pedro Raigoza

| | |
|--|-----------|
| Base offense level (§ 2A2.1(a)(1)): | 33 |
| Life threatening bodily injury (§ 2A2.1(b)(1)(A)): | <u>+4</u> |
| TOTAL: | 37 |

Rack Act 15: Conspiracy to Murder Travis Trammell

| | |
|----------------------------------|-----------|
| Base offense level (§ 2A1.5(a)): | <u>33</u> |
| TOTAL: | 33 |

On to the grouping calculations of Chapter 3, Part C as required by § 2E1.1

Application Note 1 (§ 3D1.4):

Highest Offense Level = Rack Act 9 = 47 = 1 Unit

Groups within 4 levels = Rack Acts 10/11/12 & Rack Act 13 = 2 Units

Groups within 5-8 levels = Rack Act 8 = 1/2 Unit

Disregard remaining rack acts because 9 or more levels away

| | |
|--------|-------------|
| TOTAL: | 3 1/2 Units |
|--------|-------------|

Now for the Overall Offense Level for Group Two (Count 2), the RICO

conspiracy under § 2E1.1(a)(2):

| | |
|---|-----------------|
| Lead offense (Rack Act 9): | 47 |
| Unit Adjustment for additional Rack Acts (§ 3D1.4): | <u>+4</u> |
| TOTAL OFFENSE LEVEL: | 51 ³ |

Group Three: Attempted Murder of Marcus Atkinson (Counts 3 & 4):

Offense Level 39

³ An offense level of 51 is obviously much higher than 19, the “default” offense level for RICO cases under § 2E1.1(a)(1), and Application Note 1 instructs to “[u]se whichever subsection results in the greater offense level.”

1 The United States agrees with how U.S. Probation has calculated the offense level
 2 relating to the attempted murder of Marcus Atkinson (Probation's Group Four, PSR ¶
 3 99–105), and agrees that it should be calculated as follows:⁴

| | |
|--|-----------|
| 4 Base offense level (§ 2A2.1(a)(1)): | 33 |
| 5 Life threatening bodily injury (§ 2A2.1(b)(1)(A)): | +4 |
| 6 Restraint of Victim (§ 3A1.3): | <u>+2</u> |
| 7 TOTAL: | 39 |

8

9 **Group Four: Murder of Joseph Hearns (Counts 5 & 6):**

10 **Offense Level 47**

11 The jury found beyond a reasonable doubt that Cyrus murdered Joseph Hearns and
 12 that he kidnapped him during the course of the murder. Additionally, it was established at
 13 trial that Cyrus took steps to ensure that the murder weapon, a Desert Eagle, was disposed
 14 of by witness Genece Hopkins after receiving it from Patrick Koller, who got it from
 15 Cyrus with instructions to get rid of it. This merits an obstruction of justice enhancement.

16 See § 3C1.1 Application Note 4(D) (stating that an obstruction of justice enhancement
 17 applies when a defendant destroys, conceals, or directs or procures another person to
 18 destroy or conceal, material evidence of a crime). Accordingly, this group should be
 19 calculated as follows:

| | |
|--|-----------|
| 20 Base offense level (§ 2A1.1(a)): | 43 |
| 21 Restraint of Victim (§ 3A1.3): | +2 |
| 22 Obstruction of Justice (§ 3C1.1): | <u>+2</u> |
| 23 TOTAL: | 47 |

24

25

26

27 ⁴ As a point of correction, the PSR states that the defendant restrained the victim during
 28 the course of the attempted murder, but it was actually co-conspirator Lacy Jackson who
 restrained Mr. Atkinson when Mr. Jackson and Cyrus confronted the victim.

1 Group Five: Murder of Ray Jimmerson (Counts 8, 9, & 10):**2 Offense Level 45**

3 The jury found beyond a reasonable doubt that Cyrus murdered Ray Jimmerson,
 4 Jr., in three separate counts. Additionally, and as noted above, it was established at trial
 5 that Cyrus took steps to ensure that the murder weapon, a Desert Eagle, was disposed of
 6 by witness Genece Hopkins, meriting an obstruction of justice enhancement. *See* § 3C1.1
 7 Application Note 4(D). Accordingly, the United States submits that this group should be
 8 calculated as follows:

| | |
|--|-----------|
| 9 Base offense level (§ 2A1.1(a)): | 43 |
| 10 Obstruction of Justice (§ 3C1.1): | <u>+2</u> |
| 11 TOTAL: | 45 |

13 The § 924(c) Weapons Counts (Counts 13, 14, 15, & 16):

14 The guidelines do not assign offense levels to § 924(c) charges, so they are not
 15 considered for purposes of the grouping rules; instead, they are added after a guidelines-
 16 recommended sentence is determined. § 2K2.4(b). The United States agrees with U.S.
 17 Probation that the mandatory minimum sentence for Count 13, the weapons count related
 18 to the attempted murder of Marcus Atkinson, provides for a mandatory consecutive
 19 minimum sentence of 10 years due to the discharge of a firearm, and the remaining counts
 20 each require a mandatory consecutive minimum of 25 years by law. *See* §
 21 924(c)(1)(D)(2). However, the statutory maximum term of imprisonment for all four §
 22 924(c) counts is life, *see Harris v. United States*, 536 U.S. 545 (2002), and the United
 23 States further agrees with U.S. Probation that a life term is merited on each of those
 24 counts. *See* PSR Recommendation.

26 The Final Offense Level:**27 Offense Level 43**

28 The only tasks remaining are to determine the overall offense level after applying

1 the grouping rules, and then to determine whether the defendant is entitled to a downward
 2 adjustment for acceptance of responsibility. First, the grouping calculations:

3 Highest Offense Level = Group Two = 51 = 1 Unit

4 Groups within 4 levels = Group Four = 1 Unit

5 Groups within 5-8 levels = Group One and Group Five = 1 Unit

6 Disregard Group Three because 9 or more levels away

7 TOTAL: 3 Units

8
 9 This results in a Final Overall Offense Level applicable to Cyrus as follows:

10 Lead offense (Group One): 51

11 Unit Adjustment for additional Groups (§ 3D1.4): +3

12 TOTAL FINAL OFFENSE LEVEL: 54

13
 14 The defendant claims that he is entitled to a downward adjustment for acceptance
 15 of responsibility because he indicated a willingness to entertain plea negotiations with the
 16 government on a number of occasions. It is both irrelevant and improper for the
 17 defendant to refer to or submit failed plea negotiations between the parties to this Court.
 18 First, such failed plea negotiations do not even arguably relate to any of § 3553(a)'s
 19 factors nor any of the reasons set forth in the Guidelines related to acceptance of
 20 responsibility. Moreover, the defendant is essentially inviting this Court to commit a
 21 potential Rule 11 violation and pass judgment on the reasonableness of the parties'
 22 negotiating positions leading up to and into trial. The defendant had every right to plead
 23 guilty to any or all of his counts of convictions to the Court without any agreement by the
 24 prosecution. The prosecution would have been powerless to prevent him from doing so,
 25 but he never did. The fact that he would only plead guilty so long as he had extracted
 26 some kind of concession from the government does not in any way demonstrate
 27 acceptance of responsibility.

28 Even if it were proper to present the details of failed plea negotiations to this Court

1 for consideration, this circumstances of his plea offer in this case are not mitigating.
2 Cyrus did offer to plead guilty to a life sentence—so long as the government agreed not to
3 seek a death sentence—but he did so only *after* the jury had been selected and sworn, only
4 *after* opening statements had begun, and only *after* he had been provided with the names
5 of all the witnesses against him. A guilty plea in such circumstances does not
6 demonstrate any acceptance of responsibility; rather, it merely demonstrates that Cyrus
7 finally realized the gravity of his situation and the evidence against him, well past the
8 11th hour.

9 U.S. Probation has apparently agreed to award the defendant 2 points for
10 acceptance of responsibility in reliance on § 3E1.1 Application Note 2, which says that
11 defendants who go to trial can merit the adjustment in rare circumstances where a trial
12 was conducted simply to preserve the right to contest some legal issue as in, for example,
13 a stipulated facts bench trial. Those circumstances are not even arguably present here.
14 The Court presided over the several-month guilt phase of the trial where the defendant
15 vigorously cross-examined nearly every witness and asked for a finding of not guilty on
16 all counts during closing statements.

17 Looking at all the facts and circumstances of this case, it is abundantly clear that
18 Cyrus has accepted absolutely no responsibility for his actions. The factors to consider
19 under U.S.S.G. § 3E1.1 Application Note 1 include: “Truthfully admitting the conduct
20 comprising the offense of conviction . . .” Cyrus has never done this, not even now, after
21 conviction, during the course of the preparation of the PSR where he declined even to
22 speak with U.S. Probation. PSR ¶ 72. “Voluntary termination or withdrawal from
23 criminal conduct or associations.” Cyrus did not do this, rather he fled California and
24 continued to revel in his exploits by writing raps about his murders and writing the name
25 of his gang on his jail cell walls. “Voluntary payment of restitution prior to adjudication
26 of guilt.” Cyrus has never done this. “Voluntary assistance to authorities in the recovery
27 of the fruits and instrumentalities of the offense.” Cyrus never assisted in the collection
28 of his murder weapons or in anything else; instead, he took steps to destroy evidence and

1 suborn perjury. “Voluntary resignation from the office or position held during the
 2 commission of the offense.” Cyrus did not do this. “Post-offense rehabilitative efforts.”
 3 Cyrus certainly has not rehabilitated to the point of acceptance of responsibility or made
 4 any efforts to do so. Instead, his interactions with psychologists have not been to seek
 5 treatment but have been to fight his crimes. “The timeliness of the defendant’s conduct in
 6 manifesting the acceptance of responsibility.” Even if the defendant’s offer to plead
 7 guilty to a life sentence in exchange for concessions from the government could qualify, it
 8 only occurred after trial began, heavily undermining its sincerity due to its timing.

9 Finally, U.S.S.G. § 3E1.1, Application Note 4 also provides that “[c]onduct
 10 resulting in an enhancement under § 3C1.1 (Obstruction or Impeding the Administration
 11 of Justice) ordinarily indicates that the defendant has not accepted responsibility for his
 12 criminal conduct. There may, however, be extraordinary cases in which adjustments
 13 under both §§3C1.1 and 3E1.1 may apply.” As set forth above, many of Cyrus’s counts
 14 of conviction contain upward adjustments for obstruction of justice. And this case can
 15 hardly be called one of the extraordinary situations where obstruction and contrition occur
 16 simultaneously. After all, two of the counts of conviction involve Cyrus’s murder of a
 17 federal witness expressly in order to obstruct justice. For all of these reasons, the
 18 defendant is not entitled to an adjustment for acceptance of responsibility.

19 It should be noted that, because the final offense level exceeds 43, it is treated as a
 20 43 for purposes of determining a Guidelines recommended sentence from the sentencing
 21 table. *See Application Note 2 to the Sentencing Table in Chapter 5, Part A (“An offense*
22 level of more than 43 is to be treated as an offense level of 43.”).

23

24 **V. CRIMINAL HISTORY CATEGORY**

25 All three of the defendant’s juvenile sentences must be counted under §
 26 4A1.2(d)(2), which allocates points for Cyrus’s juvenile convictions occurring “within
 27 five years of his commencement of the instant offense.” The defendant commenced the
 28 instant offenses no later than July 28, 2002, when he committed the attempted murder of

1 Marcus Atkinson in furtherance of his membership in Page Street Mob. Because all three
 2 of the defendant's juvenile sentences occurred within five years of that date, all three
 3 must be counted. The "joyriding" conviction in ¶ 113 scores as one point under §
 4 4A1.2(d)(2)(B), while Cyrus's two juvenile felony convictions in ¶¶ 114 and 115 score as
 5 two points each under § 4A1.2(d)(2)(A) because Cyrus was sentenced to be confined for
 6 more than 60 days for each crime. Moreover, 2 points must be added under § 4A1.1(d)
 7 because Cyrus was still serving his term of juvenile probation when he committed the
 8 crimes in this case, as established at trial. Accordingly, his Criminal History Category is
 9 IV.

10 U.S. Probation claims that Cyrus has no criminal history. Since it is undisputed
 11 that Cyrus was indeed on juvenile probation when he committed the instant offenses, it is
 12 difficult to understand why U.S. Probation believes that he does not at least score 2 points
 13 under § 4A1.1(d). Certainly U.S. Probation has failed to articulate any reason.

14 U.S. Probation further claims that none of the defendant's juvenile sentences can
 15 be counted because Cyrus was merely deemed a "ward of the court" for each. That
 16 position is directly contrary to binding Ninth Circuit precedent. *See United States v.*
 17 *Sanders*, 41 F.3d 480, 486 (9th Cir. 1994) (noting that, under California law, "a child may
 18 be declared a ward of the court as a 'law violator' only after the government shows
 19 'beyond a reasonable doubt' that the child has violated a criminal law" and holding that a
 20 "juvenile adjudication, in which the court declared [a defendant] a ward of the court,
 21 involve[s] an adjudication of guilt and may be used in calculating [a defendant's] criminal
 22 history").

23 U.S. Probation's position is even more astonishing given that it is factually
 24 contradictory to the PSR itself. The PSR describes Cyrus's joyriding conviction as
 25 "[a]djudicated" in ¶ 113, indicates that the defendant was "committed to Camp Sweeney"
 26 as a result of a probation violation for his felony auto theft conviction in ¶ 114, and that
 27 the defendant was again "[c]ommitted to Log Cabin Ranch School" as a result of his
 28 felony accessory conviction in ¶ 115. There is simply no evidence that he was ever even

1 deemed a ward of the court for his first and third juvenile convictions. And even if the
2 defendant were deemed a ward of the court on his second conviction when initially placed
3 on probation, it is clear that the sentence occurred as a result of his violating the terms of
4 probation, not that he was not sent to the camp as some sort of temporary housing
5 situation. The Court heard the facts and circumstances surrounding Cyrus's juvenile
6 crimes during the sentencing phase; they were serious crimes and must be counted as such
7 under the Guidelines. U.S. Probation's position is legally meritless and directly
8 contradicts the facts set forth in its own report.

9

10 **VI. OTHER § 3553(a) FACTORS**

11 The § 3553 factors in this case speak for themselves, and were essentially
12 articulated during the government's closing and rebuttal statements in the penalty phase
13 of the trial. They will not be repeated in any detail here. The bottom line is that Cyrus is
14 a serial killer who brutally murdered three members of his community over three
15 consecutive weekends shortly after attempting to murder a fourth. His murders were
16 especially heinous, involving torture, kidnaping, humiliation, execution, and close range
17 fire. He bragged about and celebrated his murders, reveling in some of their most gory
18 details. When confronted with any kind of evidence of guilt, he did nothing but exploit
19 any angle he saw, destroying evidence, fleeing under an assumed name, suborning
20 perjury, and falsely claiming he was too intoxicated to know what he was doing.

21 Even now, after representing to the court and the jury that the only possible
22 sentences for his murders were death and life without the possibility of release, he seeks a
23 sentence of life in order to maintain a possibility of release for himself. The United States
24 strongly stands by the jury's penalty phase factual findings. The jury found every single
25 statutory aggravating factor and all but one non-statutory aggravating factor unanimously
26 and beyond a reasonable doubt in this case. All of these, the jury believed, tended to
27 suggest that the defendant should have been sentenced to death. Despite the defense
28 submitting dozens of mitigating factors, the jury unanimously found only a single factor

1 weighing against the death penalty, at the much lower evidentiary standard of “more
 2 likely than not.” Whatever mitigation there may be in Cyrus’s favor, it is overwhelmingly
 3 outweighed by the multitude and magnitude of the serious aggravating factors he
 4 presents.

5 The jury’s verdict has ensured that Cyrus will spend the rest of his life in prison.
 6 To a certain extent, whether his sentences will run concurrently or consecutively is
 7 symbolic. However, in a case like this where real human being’s lives were brutally cut
 8 short to devastating effect, each individual victim deserves his own individual justice for
 9 Cyrus’s brutal crimes. Accordingly, the United States strongly recommends that the
 10 defendant receive consecutive sentences for each of his murders and his attempted
 11 murder. His victims, Marcus Atkinson, Joseph Hearn, Randy Mitchell, and Ray
 12 Jimmerson, Jr., each deserve vindication for the crimes committed against them. They
 13 each deserve that symbol, as do their friends, families, and loved ones, even if a symbol is
 14 all it is.

15

16 **VII. CONCLUSION**

17 For the foregoing reasons and for the evidence submitted and reasons articulated
 18 during both guilt and punishment phases of the trial in this matter, the United States
 19 respectfully requests that the Court find Offense Level 43, Criminal History Category IV
 20 applicable to Cyrus, yielding a Guidelines recommended sentence of life plus consecutive
 21 sentences for the four § 924(c) charges. Accordingly, the United States asks that the
 22 Court sentence the defendant accordingly:

23 Count One (narcotics conspiracy): life imprisonment;

24 Count Two (RICO conspiracy): life imprisonment;

25 Count Three (VICAR attempted murder of Marcus Atkinson); 10 years
 26 imprisonment;

27 Count Six (VICAR kidnaping of Joseph Hearn): life imprisonment;

28 Count Nine (witness murder of Ray Jimmerson, Jr.,): life imprisonment;

Count Ten (witness retaliation murder of Ray Jimmerson, Jr.): life imprisonment;
Count Eleven (possession with intent to distribute): 5 years imprisonment; and
Count Twelve (possession with intent to distribute near playground): 5 years
imprisonment,

all the foregoing of which to run concurrently with one another and consecutively with all other counts;

Count Four (VICAR assault with a dangerous weapon of Marcus Atkinson): 20 years imprisonment, consecutive to all other counts;

Count Five (VICAR murder of Joseph Hearn): life without the possibility of release, consecutive to all other counts;

Count Seven (VICAR murder of Randy Mitchell): life without the possibility of release, consecutive to all other counts;

Count Eight (VICAR murder of Ray Jimmerson, Jr.): life without the possibility of release, consecutive to all other counts;

Counts Thirteen through Sixteen (weapons counts): life imprisonment, consecutive to all other counts and to each other.

This to be followed by a total term of supervised release of life, \$10,000 in
tion, and \$1,600 in special assessments.

DATED: November 15, 2010

Respectfully submitted,

BRIAN J. STRETCH
Acting United States Attorney

/s
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Assistant United States Attorneys